

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **January 24, 2006, Work Session**

AGENDA ITEM NO.: 6

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **Open Air Burning**

RECOMMENDATION: Discuss possible amendments to the Open Air Burning Ordinance.

SUMMARY: At Council's January 10 meeting a citizen suggested that the City should ban outdoor burning. Information provided for that meeting is attached here for reference. Included is a copy of the current ordinance which allows the burning of leaves and landscape clippings with certain conditions.

Coincident with this discussion, the State is currently advertising amendments to its regulations regarding open air burning. Those changes would require an examination of the City's ordinance in any case. City Attorney Walter Erwin will be able to address the proposed changes.

Former Fire Marshall Doug DeJarnette, now Acting Deputy Chief for Operations, will be in attendance during the work session. He has provided the following points for Council's consideration:

** Enforcement - Under the current ordinance, the Division of Inspections is charged with the responsibility for enforcement of the ordinance in conjunction with the Fire Marshal's Office and the Lynchburg Police Department. Since I came to work in the FMO (August 2004), we have been the sole agency doing enforcement and issuing permits. When this ordinance was originally adopted, there were 9 persons assigned to the FMO. Now there are 3. Even at that we respond to complaints quickly when they are received. I will be prepared to address questions as to our procedure for response and our actions based on our discovery.*

** Penalties - Penalties for infraction probably should be discussed in order to find a means to deter illegal or unwanted open air burning that would allow for some flexibility without automatically creating a criminal charge. Class 2 and Class 1 misdemeanor charges may be too severe for infractions of a minor nature. Automatic fines may be preferable in some instances.*

** Fees for permits should be adjusted upwards.*

** There is some specific language that should be cleaned up i.e. reference to the Lynchburg Fire Prevention Code.*

** I would really like to see the inclusion of a mechanism that would allow us to seize and remove (at the expense of the owner, occupant, responsible party) any barrel or container that is utilized for the purpose of burning garbage or waste. We can extinguish the fire or have it extinguished but if the barrel remains then the barrel will probably be used again.*

If Council wishes to consider changes to the Open Air Burning Ordinance, it should discuss the process with respect to citizen input, for example, a public hearing on a draft ordinance. Furthermore, Council may want to examine alternatives to an absolute prohibition on outside burning such as increasing the distance that fires must be from occupied dwellings.

PRIOR ACTION(S): None

FISCAL IMPACT: N/A

CONTACT(S): Kimball Payne; Walter Erwin; Doug DeJarnette

ATTACHMENT(S): Information provided for January 10 Council meeting.

REVIEWED BY: lkp

Lynchburg City Council
Lynchburg, Virginia

December 28, 2005

To the Lynchburg City Council,

I am a Lynchburg resident who would like to address the City Council regarding open air burning in Lynchburg. I live at 3400 Wilson Avenue and have lived at this address for 3 years. My next door neighbor burns leaves and other items in his yard quite frequently, and smoke fills my backyard, gets in my house, and has made me very ill since living at this address. I have an allergy to mold which I take allergy shots for, but when leaves which contain mold are burned, the mold travels through the air, and is inhaled by anyone who is near it, including me.

I have tried to talk to the neighbor about it, but he says he will continue to burn. I also have neighbors across the street, and several doors down who do outdoor burning as well. There are people besides me, especially older people, who are suffering badly from the inhalation of this second hand smoke. The toxins that it releases into the air, particularly from household trash such as styrofoam, are very dangerous, aggravate allergies, and cause respiratory problems.

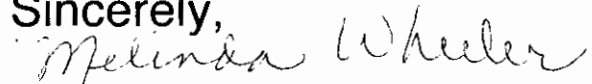
The quality of our air ultimately affects everyone who lives here, and it is our responsibility to make sure that it is safe and clean. I have woken up gasping in the middle of the night for air because of the smoke that pours into my yard, and my eyes are constantly red. I have severe headaches, dizziness, and sore throats, and have had to take time off from work as well.

There are many allergy and asthma sufferers in the

city who feel the same way. Therefore, I would like to present the City of Lynchburg City Council with a signed petition asking that they please vote to ban the dangerous practice of open air burning in Lynchburg.

Thank you very much for the opportunity to speak.

Sincerely,

A handwritten signature in cursive script that reads "Melinda Wheeler".

Melinda Wheeler
3400 Wilson Avenue
Lynchburg, Virginia
24501

Kimball Payne/CityHall/COL

12/30/2005 11:50 AM

To Patricia W Kost/CityHall/COL@COL

cc Walter C Erwin/CityHall/COL@COL

bcc

Subject Fw: Citizen Request to go to Council

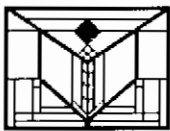
Pat,

Please include these emails from Walter and his attachment with the request from the citizen in Council's package so that they will have some background on this issue. Also, please include this excerpt from the City Code. Thank you.



Excerpt from the Lynchburg City Code re Open Air Burning.doc

----- Forwarded by Kimball Payne/CityHall/COL on 12/30/2005 11:39 AM -----



Walter C Erwin/CityHall/COL

12/29/2005 01:11 PM

To Kimball Payne/CityHall/COL@COL

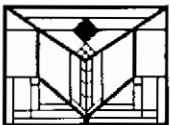
cc Robert D Dejarnette/PubSafe/COL@COL

Subject Fw: Citizen Request to go to Council

Kim,

The citizen's letter also complains about the toxins that are released into the air from the burning of household trash. The City Code specifically prohibits the burning of any type of household refuse. The only open burning that is allowed in the City is the burning of leaves; tree, yard and garden trimmings; land disposal refuse such as tree stumps, brush, etc; and combustible liquids or gaseous material in a flare or flare stack.

----- Forwarded by Walter C Erwin/CityHall/COL on 12/29/2005 01:05 PM -----



Walter C
Erwin/CityHall/COL

12/29/2005 01:01
PM

To Kimball Payne/CityHall/COL

cc Robert D Dejarnette/PubSafe/COL@COL

Subject Re: Fw: Citizen Request to go to Council

Kim,

The City's current Open Air Burning Ordinance was adopted in 1981. City representatives (the Fire Department, the Inspections Division, the City Attorney's Office) worked with representatives of DEQ in drafting the ordinance. At the time it was adopted the ordinance met the State's air pollution control standards. It is possible that DEQ may have a different position on the appropriateness of the burning of leaves at this time. I was on the committee that drafted the ordinance. There was discussion as to whether or not the City should prohibit all open air burning, including the burning of leaves. However, City officials ultimately decided that a complete ban on the burning of leaves was too harsh. It tried to draft an ordinance that balanced the needs of those citizens who wish to burn leaves against those citizens who are opposed to this practice. I am attaching a letter a former mayor had me send a citizen who was opposed to leaf burning. The issues are still the same as outlined in my letter. City Council could amend the City Code to prohibit the open air burning of leaves, brush, etc. if it wished. However,

most ordinances are drafted to address the needs of the "average citizen." The ultimate issue is how far the City wishes to go to protect those citizens that are overly sensitive to smoke. Of course, citizens certainly have the right to ask Council to amend the current ordinance.



leaf burning.rtf .

December 14, 1993

Mrs. June E. Gottshalk
138 Darrow Lane
Greenlawn, NY 11740-2907

Dear Mrs. Gottshalk:

The Mayor asked me to respond to your letter concerning, the open burning of leaves within the city.

The city does have an ordinance that allows the open burning of leaves from September 15 through February 15. However, the ordinance limits the hours of burning and imposes a number of requirements that must be met in order to burn leaves-i.e. citizens must check with the fire marshal's office to verify that atmospheric conditions are appropriate; there are restrictions on the location of burning; requires adult supervision, etc. The State's air pollution control officials assisted the City in writing this ordinance and it complies with the State's air pollution control standards. Further, in an effort to try and discourage citizens from burning leaves, the City provides free leaf pickup twice each fall.

The city realizes that some individuals are allergic to smoke and tries to be sensitive to their needs. Sensitivity to the needs of such individuals was one of the reasons the City adopted an ordinance regulating the smoking of cigarettes in public places. The City's leaf burning ordinance is an attempt to balance the needs of individuals who are sensitive to smoke against the needs of individual who have large amounts of leaves that must be removed and for one reason or another are not able to take advantage of the City's free leaf collection-e.g. may have missed the pickup date due to illness or vacation, etc. Unfortunately, the City cannot please all individuals regarding this subject. Some individuals believe that the City should ban all leaf burning while others believe that the city's current ordinance is too restrictive. The City has tried to reach a compromise that accommodates the needs of all its citizens.

Sincerely,

Walter C. Erwin

Excerpt from the Lynchburg City Code

ARTICLE IV. OPEN AIR BURNING*

*Editor's note--See the editor's note to §§ 4-1-- 4-12.

Sec. 4-58. Definitions.

The following definitions shall apply to these words when used in this article.

- (a) Garbage. Putrescible animal and vegetable matter accumulated by a household in the course of ordinary day-to-day living.
- (b) Household refuse. Waste material and trash normally accumulated by a household in the course of ordinary day-to-day living.
- (c) Open burning. The burning of any matter in such a manner that the resulting products of combustion from the burning are emitted directly into the atmosphere without passing through a stack, duct or chimney.
- (d) Refuse. Trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resultant from residential, agricultural, commercial, industrial, institutional, trade, construction, land cleaning, forest management, and emergency operations. (Ord. No. O-81-149, § 1 [Art. I, § 4.1-1], 6-23-81)

Sec. 4-59. Open burning—Generally.

Except as provided in Sections 4-60 through 4-63 of this chapter, within the Lynchburg city limits:

- (a) No owner or other person shall cause, suffer, allow or permit open burning of household or other refuse.
- (b) No owner or other person shall cause, suffer, allow or permit open burning of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum-based materials, except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.
- (c) No owner or other person shall cause, suffer, allow or permit open burning for the purpose of a salvage operation.
- (d) No owner or other person shall cause, suffer, allow or permit open burning of toxic or hazardous materials or containers for such materials.
- (e) No owner or other person shall cause, suffer, allow or permit open burning of garbage, animal carcasses or animal wastes.

(f) No owner or other person shall cause, suffer, allow or permit open burning so as to produce such quantities of air pollutants, uncombined water or other materials as may cause a traffic hazard.

(g) Upon declaration by the fire marshal's office that atmospheric or other conditions (i.e. high winds, adverse humidity, etc.) are not acceptable to permit open burning that is otherwise permitted under Sections 4-60 through 4-63 of this chapter, no owner or other person shall cause, suffer, allow or permit open burning; and any in-process burning shall be immediately terminated. It shall be the duty of the fire marshal's office to advise the news media in the city on those days on which atmospheric or other conditions are unacceptable for open burning otherwise permitted under Sections 4-60 through 4-63 of this chapter.

(h) Open burning permitted under the provisions of this article does not exempt or excuse any owner or other person from the consequences, liabilities, damages or injuries which may result from such burning, nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of governmental entities having jurisdiction over such burning, even though the open burning is conducted in compliance with this article. (Ord. No. O-81-149, § 1 (Art I, § 4.1-2), 6-23-81)

Sec. 4-60. Same — Exceptions.

Open burning is permitted in the following instances, provided the provisions of subsections (a) through (g) of section 4-59 of this chapter are met, and provided the person or persons responsible for such burning shall obtain the permit, if applicable, required by paragraph (i) of this section.

(a) Upon the request of an owner or responsible public official, civil or military, the division of inspections may approve open burning under controlled conditions, for the elimination of a hazard which constitutes a threat to the public health, safety or welfare and which cannot be remedied by other means consonant with the circumstances presented by the hazard.

(b) Open burning is permitted for training and instruction of government and public fire fighters under the supervision of the designated officials and industrial in-house fire fighting personnel with clearance from the fire marshal's office. The designated officials in charge of the training shall notify and obtain the approval of the division of inspections prior to conducting the training exercise. Training schools where permanent facilities are installed for fire fighting instruction are exempt from this notification requirement.

(c) Open burning is permitted for campfires or other fires that are used solely for recreational or ceremonial purposes, provided the owner or other person conducting such campfire, recreational or ceremonial fire complies with the provisions of Article 3, F-301.0 of the Lynchburg Fire Prevention Code.

(d) Open burning is permitted for outdoor noncommercial preparation of food, and for warming of outdoor workers, provided materials specified in subsections (a), (b), (d) and (e) of section 4-59 of this chapter are not burned.

(e) Open burning of leaves located on the premises of private residences is permitted, provided the requirements of section 4-62 of this chapter are met.

(f) Open burning of tree, yard and garden trimmings located on the premises of private residences is permitted, provided the accumulation of tree, yard and garden trimmings to be burned does not exceed eight (8) feet in any direction, and provided the requirements of section 4-63 of this chapter are met.

(g) Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack.

(h) Open burning is permitted for disposal of land clearing refuse on the site of clearing operations resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills or from any other clearing operations which may be approved by the division of inspections, provided the following conditions are met:

(1) All reasonable efforts must be employed to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, saw logs and firewood.

(2) The material to be burned shall consist of brush, stumps and similar land clearing refuse generated at the site and shall not include demolition material or any other refuse brought in from other sites.

(3) The burning shall be at least one thousand (1,000) feet from any occupied building or buildings unless the owner(s) or occupant(s) has given prior written permission for closer burning or shall be greater than one thousand (1,000) feet from any occupied building or buildings if the division of inspections determines that it is necessary to protect public health and welfare.

(4) The burning shall be supervised at all times by such personnel and equipment as the division of inspections and the fire marshal's office determine is necessary to protect the public health and welfare.

(5) The burning shall be conducted only when the prevailing winds and atmospheric conditions are acceptable, as determined by the fire marshal's office.

(i) When any burning contemplated by paragraphs (a), (g), or (h) of this section is to occur, or where the burning permitted by paragraph (f) exceeds the maximum limits, the person or persons responsible for the burning shall, within seventy-two (72) hours prior to such burning, apply for a permit from the division of inspections. Such permit may be granted only after an on-site

inspection and confirmation by the division of inspections and the fire marshal's office determines that the burning can and will comply with the conditions set forth in paragraph (h) of this section and any other conditions which are deemed necessary by the division of inspections and the fire marshal's office to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of this chapter or the laws and regulations of any governmental entities having jurisdiction over such burning. The fees for such permits shall be as follows:

- (1) For open burning of five (5) acres or less, a flat fee of twenty-five dollars (\$25.00) plus one dollar (\$1.00) for each acre to be burned or one dollar (\$1.00) for each acre from which materials have been gathered to be burned.
- (2) For opening burning of more than five (5) acres, but not exceeding ten (10) acres, a flat fee of twenty-five dollars (\$25.00) plus five dollars (\$5.00) per acre to be burned or five dollars (\$5.00) for each acre from which material has been gathered to be burned.
- (3) For open burning in excess of ten (10) acres, a flat fee of one hundred dollars (\$100.00).

In the event any open burning for which a permit has been issued pursuant to this section does not take place within three (3) days from the issuance of such permit, the permit shall expire, and before the proposed open burning can take place, the permit must be renewed by the division of inspections. Any applicant who applies for renewal of a permit prior to the expiration of the same shall not be required to pay any additional fees for renewal of the permit. In the event any open burning for which a permit has been issued pursuant to this section does not take place within three (3) days from the issuance of such permit, and the applicant later applies for renewal of such permit the payment of any additional license fees shall be at the discretion of the division of inspections.

(j) Open burning is permitted for forest management and agricultural practices approved by the division of inspections provided the conditions and requirements of the state air pollution control board have been met. (Ord. No. O-81-149, § 1 [Art. I, § 4.1-3], 6-23-81)

Sec. 4-61. Same — Exclusions.

This article does not apply to open burning using devices or methods specifically designed to provide good combustion performance, provided the following conditions are met:

- (a) The owner or other person conducting such burning shall use only such devices that have been approved and required by the division of inspections and the fire marshal's office.
- (b) Visual emissions shall comply with all applicable state and federal laws.
- (c) Prior to the initial installation (or re-installation, in cases of relocation) and operation of devices or methods subject to the provisions of this section, the person responsible for the burning shall obtain a permit from the division of inspections. Such permit shall be granted only

after an on-site inspection and confirmation by the division of inspections, and fire marshal's office determines that the burning can and will comply with the conditions of this section and any other conditions which are deemed necessary by the division of inspections and the fire marshal's office to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of this chapter or the laws and regulations of any governmental entities having jurisdiction over such burning. The fee for such permits shall be twenty-five dollars (\$25.00). (Ord. No. O-81-149, § 1 [Art. I, § 4.1-4], 6-23-81)

Sec. 4-62. Leaf burning generally prohibited; exceptions.

(a) The open burning of leaves within the city is prohibited, except as provided in paragraph (b) of this section.

(b) The opening burning of leaves from trees by persons on property where they reside is permitted from September 15 through February 15, of each year, between the hours of 8:00 a.m. and 8:00 p.m., provided that the person or persons conducting the burning has the permission of the property owner and provided that:

(1) At least one person of sixteen (16) years of age or older is supervising, and in close proximity to the burning at all times.

(2) A water hose, at least one-half (1/2) inch in diameter, with nozzle, connected to a fully charged, operational, outside bib spigot, is in close proximity to the burning at all times.

(3) The location of the burning is not less than forty (40) feet from any building or buildings and at least ten (10) feet from adjoining property lines and the public streets or other public rights-of-way. The location of the burning may be less than ten (10) feet from adjoining property lines, provided the adjoining property owner(s) has given prior written permission for such burning. The location of the burning may be less than ten (10) feet from the public streets or other public rights-of-way, provided the division of inspections has given prior written permission for such burning.

(4) The atmospheric conditions are acceptable, as determined by the fire marshal's office. It shall be the duty of the fire marshal's office to advise the news media in the city on those days on which the atmospheric conditions are unacceptable.

(5) Citizens must check with the fire marshal's office prior to setting fires. (Ord. No. O-81-149, § 1 [Art. II, § 4.1-5], 6-23-81)

Sec. 4-63. Burning yard trimmings generally prohibited; exceptions.

(a) The open burning of tree, yard and garden trimmings within the city is prohibited except as provided in paragraph (b) of this section.

(b) The opening burning of tree, yard and garden trimmings by persons on property where they reside is permitted, provided that the person or persons conducting the burning has the permission of the property owner and provided that:

(1) At least one person of sixteen (16) years of age or older is supervising and in close proximity to the burning at all times.

(2) A water hose, at least one-half (1/2) inch in diameter, with nozzle, connected to a fully-charged, operational, outside bib spigot, is in close proximity to the burning at all times.

(3) The location of the burning is not less than three hundred (300) feet from any occupied building or buildings unless the occupant or occupants has given prior written permission for closer burning, and at least ten (10) feet from adjoining property lines and the public streets or other public rights-of-way. The location of the burning may be less than ten (10) feet from the public streets or other public rights-of-way provided the division of inspections has given prior written permission for such burning.

(4) The atmospheric conditions are acceptable, as determined by the fire marshal's office. It shall be the duty of the fire marshal's office to advise the news media in the city on those days on which the atmospheric conditions are unacceptable.

(5) The accumulation of tree, yard and garden trimmings to be burned cannot exceed eight (8) square feet in any direction. If the accumulation of tree, yard and garden trimmings to be burned exceeds eight (8) feet in any direction, a permit must be obtained for such burning in accordance with the requirements of Section 4-60(i) of this chapter.

(6) Citizens must check with the fire marshal's office prior to setting fires. (Ord. No. O-81-149, § 1 [Art. III, § 4.1-6], 6-23-81)

Sec. 4-64. Enforcement.

(a) The provisions of this article shall be enforced by the division of inspections in conjunction with the fire marshal's office and the police department.

(b) Whenever the division of inspections or any member of the fire marshal's office or police department has reason to believe that a violation of any provision of this article or a rule or regulation issued pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. (Ord. No. O-81-149, § 1 [Art. IV, § § 4.1-7, 4.1-10], 6-23-81)

Sec. 4-65. Penalties.

Any owner or other person who violates the provisions of this article shall be guilty of a Class 2 misdemeanor. Each day of violation shall constitute a separate offense. (Ord. No. O-81-149, § 1 [Art. IV, § 4.1-8], 6-23-81)

Sec. 4-66. Nuisances prohibited.

Nothing in this article relating to open burning shall in any manner be construed as authorizing or permitting the creation of or maintenance of a nuisance. (Ord. No. O-81-149, § 1 [Art. IV, § 4.1-9], 6-23-81)

Sec. 4-67. Emergency procedure.

Notwithstanding the provisions of this article or any other provision of law, if the division of inspections or any member of the fire marshal's office or police department finds that any owner or other person engaged in open burning is causing or creating an emergency which requires immediate action to protect the public health or safety, the division of inspections or such member of the fire marshal's office or police department shall order such owner or other person to discontinue such open burning immediately and such order shall be complied with immediately. Any owner or other person who fails to abide by such order shall be guilty of a Class 1 misdemeanor. If any owner or other person so warned fails to immediately discontinue such burning, the division of inspections, fire marshal's office, or police department may take whatever action is necessary to stop such open burning and the owner or other person who refused to discontinue the burning shall be liable for the expense incurred by the city in stopping the open burning. (Ord. No. O-81-149, § 1 [Art. IV, § 4.1-11], 6-23-81)